

ORIGINAL

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MARY E. D'ANDREA, CLERK
Per _____
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ATTORNEYS FOR DEFENDANTS
DAVID J. SALINGER, M.D. and
KEYSTONE ONCOLOGY, LLC

AMANDA BARGE and ARTHUR BARGE
Plaintiffs

v.

DAVID J. SALINGER, M.D., WILLIAM
YING, PH.D., KEYSTONE ONCOLOGY,
LLC, COMPREHENSIVE PHYSICS AND
REGULATORY SERVICES, LTD.
Defendants

IN THE UNITED STATES DISTRICT
COURT FOR THE MIDDLE DISTRICT OF
PENNSYLVANIA

NO. 1:CV-00-1881

JUDGE CONNER

JURY TRIAL DEMANDED

**MOTION OF DEFENDANTS, DAVID SALINGER, M.D. AND KEYSTONE
ONCOLOGY, LLC TO MOLD VERDICT IN ACCORDANCE WITH 40 P.S. 991.1817**

And Now, this 2nd day of May, 2003, come Defendants, David Salinger, M.D. and Keystone Oncology, LLC, (hereinafter sometimes referred to as "Salinger" and "Keystone") and move this Honorable Court to mold the verdict returned by the jury on April 29th, 2003, and in support thereof aver as follows:

1. The within action was tried to a verdict on April 29th, 2003 before this Honorable Court. The verdict of the jury was in favor of Plaintiffs in the total amount of

\$350,000.00, allocated between Plaintiffs Amanda Barge and Arthur Barge as follows:

Amanda Barge - \$325,000.00

Arthur Barge - \$ 25,000.00

2. The jury further apportioned liability for payment of the verdict by and between the various defendants in this matter as follows:

David Salinger, M.D. and Keystone Oncology, LLC – 65%

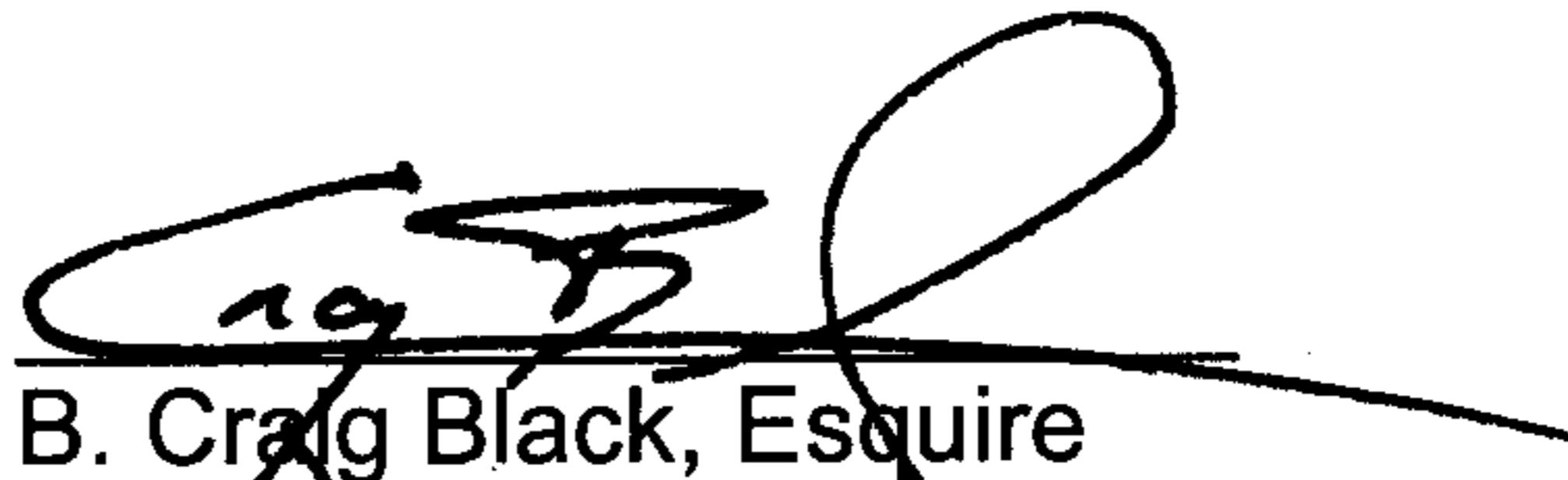
William Ying, Ph.D. and Comprehensive Physics & Regulatory Services – 35%

3. This Honorable Court exercised jurisdiction in this matter via diversity of citizenship, pursuant to 28 U.S.C. 1332(a).
4. A federal court sitting in diversity jurisdiction shall apply the substantive law of the state with the most significant contact to the proceeding. Erie Railroad v. Tompkins,. 304 U.S. 64, *cert denied*, 305 U.S. 639 (1938).
5. The substantive law of the Commonwealth of Pennsylvania is applicable to this matter in that the Commonwealth of Pennsylvania is the state wherein the cause of action arose and the state of residence of all named Defendants. The only other state with any connections to this matter is the state of Maryland, which only connection to this matter is that it is the state where Plaintiffs' reside.
6. Defendants David Salinger, M.D. and Keystone Oncology, LLC were insured under a policy issued by PHICO Insurance Company ("PHICO") at the time of the incident giving rise to Plaintiffs causes of action.
7. The Commonwealth Court of Pennsylvania entered an Order of Liquidation with a finding of insolvency against PHICO on February 1, 2002.
8. As a result of the Liquidation Order, the provisions of 40 P.S. § 991.1817 apply to Plaintiffs claims. A copy of the statute is appended hereto as Exhibit "A" for the ease of the Court's reference.
9. Pursuant to the provisions of 40. P.S. § 991.1817, Plaintiffs are required to exhaust first their right under any insurance policy, including but not limited to claims under accident and health insurance, worker's compensation, Blue Cross and Blue Shield, and all other coverages except for policies of an insolvent insurer.
10. Any failure to exhaust other insurance bars Plaintiffs' recovery in this action.

11. The parties agree and have stipulated that Blue Cross and Blue Shield has paid the sum of \$37,852.46 on behalf of medical bills and expenses incurred by Amanda Barge, which expenses were submitted to the jury as part of Plaintiffs' damages.
12. Defendants Salinger and Keystone are entitled to a reduction in the amount of damages awarded against them in the amount of \$37,852.46 by virtue of the application of 40 P.S. §991.1817.

WHEREFORE, Defendants, David Salinger, M.D. and Keystone Oncology, LLC request that this Honorable Court mold the verdict in this matter in order to comply with the non-duplication of recovery provisions codified at 40 P.S. §991.1817 and reduce the liability of Defendants David Salinger, M.D. and Keystone Oncology, LLC to the amount of \$189,647.54 and enter judgment in accordance therewith.

Respectfully submitted,



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Counsel for David Salinger, M.D. and
Keystone Oncology LLC

Service: **Get by LEXSTAT®**

TOC: Pennsylvania Code, Constitution and ALS > / . . . / > ARTICLE XVIII. PENNSYLVANIA PROPERTY AND CASUALTY INSURANCE GUARANTY ASSOCIATION > § 991.1817. Non-duplication of recovery

Citation: 40 p.s. 991.1817

40 P.S. § 991.1817

PENNSYLVANIA STATUTES, ANNOTATED BY LEXISNEXIS™

* THIS SECTION IS CURRENT THROUGH ACT 139 OF THE 2002 LEGISLATIVE SESSION *
*** FEBRUARY 2003 ANNOTATION SERVICE ***

PENNSYLVANIA STATUTES
TITLE 40. INSURANCE
CHAPTER 2. INSURANCE COMPANIES
ARTICLE XVIII. PENNSYLVANIA PROPERTY AND CASUALTY INSURANCE GUARANTY
ASSOCIATION

♦ **GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION**

40 P.S. § 991.1817 (2002)

§ 991.1817. Non-duplication of recovery

(a) Any person having a claim under an insurance policy shall be required to exhaust first his right under such policy. For purposes of this section, a claim under an insurance policy shall include a claim under any kind of insurance, whether it is a first-party or third-party claim, and shall include, without limitation, accident and health insurance, worker's compensation, Blue Cross and Blue Shield and all other coverages except for policies of an insolvent insurer. Any amount payable on a covered claim under this act shall be reduced by the amount of any recovery under other insurance.

(b) Any person having a claim which may be recovered under more than one insurance guaranty association or its equivalent shall exhaust first his right of recovery from the association of the place of residence of the insured. Any amount payable on a covered claim under this act shall be reduced by the amount of recovery from any other insurance guaranty association or its equivalent.

LexisNexis (TM) Notes:

★ CASE NOTES
★ TREATISES AND ANALYTICAL MATERIALS

★ CASE NOTES

★ Governments : Legislation : Interpretation
★ Healthcare Law : Insurance : Patient Obligations
★ Insurance Law : Claims & Contracts : Coinsurance
★ Insurance Law : Claims & Contracts
★ Insurance Law : General Liability Insurance : Coverage Trigger
★ Insurance Law : Malpractice Insurance : Healthcare Providers
★ Insurance Law : Motor Vehicle Insurance : Uninsured Motorists Coverage
★ Insurance Law : Regulation of Insurance : Insurance Guaranty Associations

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a copy of the foregoing Motion Of Defendants, David Salinger, M.D. And Keystone Oncology, LLC To Mold Verdict In Accordance With 40 P.S. 991.1817, upon the person(s) and in the manner indicated below, which service satisfies the requirements of FRCP 5(b), by depositing a copy of same in the United States Mail, first-class postage prepaid, addressed as follows:

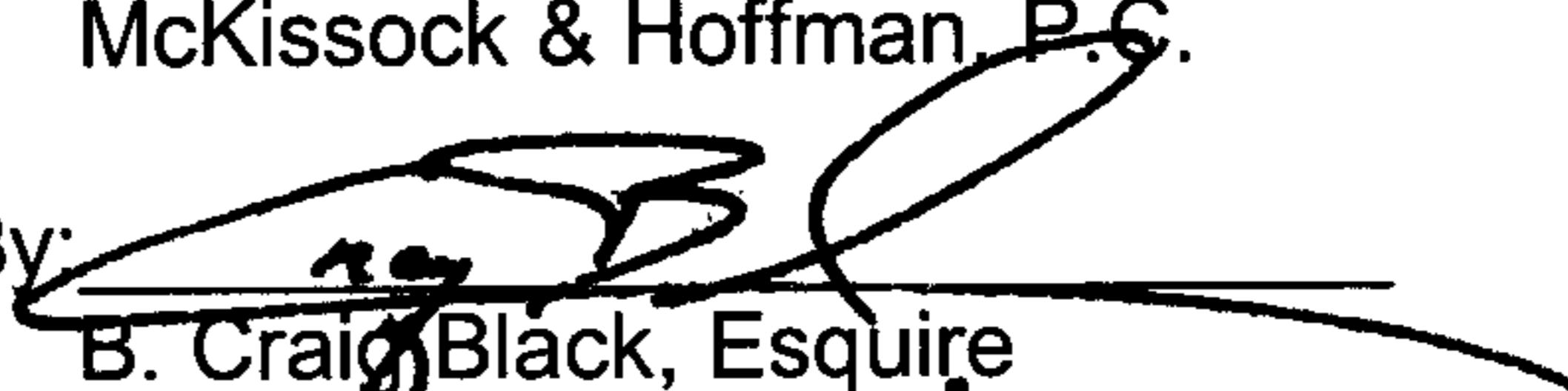
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Dated: 5-1-03